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In the Supreme Court of the United States

OCTOBER TERM, 1977

ALLEN AARON JACKSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner, who was injured while performing military service, seeks review of a decision of the Court of Claims dismissing his action for damages for failure to establish a breach of contract.

On January 24, 1974, petitioner signed an enlistment contract that obligated him to serve three years in the United States Army (Pet. App. A, pp. i-iv). Petitioner began his active duty service on February 25, 1974, at which time he executed a number of additional documents, including DA Form 3286-47-R, the Special Unit Enlistment Option (Pet. App. A, p. v), which provided in Part VI, Sec. I, Paragraph 1(c), that: "Upon completion of BCT [basic combat training], I will undergo AIT [advanced individual training] in military occupational specialty * * * Mechanical Maintenance * * *." Petitioner's enlistment option assured him that he would

be assigned to his chosen unit for at least 16 months. DA Form 3286-47-R, Part VI, Sec. III, Paragraph 1(a) (Pet. App. A, p. vi). The enlistment contract, however, did not guarantee that petitioner would serve only in the mechanical maintenance specialty. Part I of DA Form 3286-47-R, Paragraph 1(f), provided (Pet. App. A, pp. ix-x; emphasis added) that:

> In connection with my enlistment in the Regular Army, I hereby acknowledge that:
>
> * * * * *
>
> (f) My choice of initial enlistment option * * * does not constitute any guarantee that a substantial part of my enlistment will be served in this option, and the needs of the service may result in my transfer *at any time* (other than as may be provided by the specific option selected) to any other assignment * * *.

When petitioner completed his basic training, he was initially transferred to a tank division at Fort Riley, Kansas. Nine days later, on May 20, 1974, while participating in combat maneuvers, petitioner suffered the injuries that have given rise to this lawsuit (Pet. App. B, p. xvii).

Petitioner instituted this action in the Court of Claims, alleging that his assignment to a tank division constituted a breach of his enlistment contract and that the injuries he suffered in training were a result of that breach (Pet. App. B, p. xvii). The Court of Claims held that there had been no breach of the enlistment contract and that petitioner's action therefore sounded in tort. The case was dismissed pursuant to 28 U.S.C. 1491, which provides that the Court of Claims has no original tort jurisdiction (Pet. App. C, p. xxix).

1. Petitioner contends that he was guaranteed that at no time in his military career would he ever be required

to engage in dangerous combat-type maneuvers (Pet. 13). The Court of Claims correctly concluded that this contention is inconsistent with the plain language of petitioner's enlistment agreement. While the agreement insured that petitioner would spend at least 16 months of his military career in the infantry division at Fort Riley, Kansas (Pet. App. A, pp. v-vi), the contract did not provide that petitioner never would be assigned to dangerous combat-type maneuvers during his military career. To the contrary, the enlistment agreement explicityly provided for transfer "to any other assignment" (Pet. App. A, p. x).

Petitioner contends (Pet. 15) that he relied on oral assurances by the Army recruiter that he would not be given combat-type assignments, but the specific language of the enlistment agreement provides (Pet. App. A, p. vii; emphasis added):

> I have read and understand each of the statements above and the statements contained in other parts of DA Form 3286, signed by me, and understand that they are intended to constitute all promises whatsoever concerning my enlistment. *Any other promise, representation, or commitment made to me in connection with my enlistment is written below in my own handwriting, or is hereby waived* (If none, write "None.").

In the space below this provision, petitioner wrote "none" (Pet. App. C, p. xxiii). This waiver belies petitioner's claim of having relied upon a recruiter's representation.[1]

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[1]In any case, a recruiter's alleged promise could not alter the written agreement. The recruiter was not authorized to promise exclusively noncombat-type activities, and the United States cannot be bound by acts of its agents that are beyond their authority. *Federal Crop Insurance Corp.* v. *Merrill*, 332 U.S. 380. The Court of Claims therefore correctly concluded that the enlistment agreement "imposed no obligation on the United States to refrain from having plaintiff participate in a field training exercise" (Pet. App. C, p. xxiv).

2. Petitioner also claims (Pet. 6-7) that the enlistment agreement required the Army to assign him to training in his chosen specialty of mechanical maintenance immediately upon completion of his basic training. Petitioner relies upon DA Form 3286-47-R, Part VI, Sec. I, Paragraph I(c), providing that: "[u]pon completion of BCT [basic combat training], I will undergo AIT [advanced individual training] in military occupational specialty * * * Mechanical Maintenance * * *" (Pet. App. A, p. v).

The Court of Claims did not interpret this language. The court apparently was operating under a misapprehension that petitioner had not completed his basic combat training, for it concluded its review of the enlistment agreement by stating (Pet. App. C, p. xxiii):

> Before the plaintiff could take the mechanical maintenance course he had to complete basic combat training. It is apparent that plaintiff had not complied with this requirement, as he had only been at Fort Riley nine days when he was injured and obviously was engaged in basic combat training at the time of injury.

In fact, petitioner had completed his basic combat training prior to his injury, and neither petitioner nor the government ever has indicated otherwise (see Pet. 6).

Because of this misapprehension of the facts, the Court of Claims did not determine whether the failure to assign petitioner to his specialty immediately upon completion of his basic combat training constituted a breach of the enlistment agreement that provides a basis for jurisdiction under 28 U.S.C. 1491. In our view, there was no breach: the contract need not be read as providing for assignment to training in mechanical maintenance immediately after completion of basic training, but in any event the contract

explicity stated that petitioner could be transferred to other assignments "at any time" (Pet. App. A, p. x).[2] However, in view of the seriousness of petitioner's injuries, we believe that these questions of contract construction should be passed upon by a court.

Accordingly, this Court may deem it appropriate to vacate the judgment below and remand the case to the Court of Claims for its determination whether the failure to assign petitioner to his advanced individual training specialty immediately after completion of basic combat training constituted a breach of the enlistment agreement and, if so, whether petitioner is entitled to damages.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

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[2]Moreover, while the Court of Claims had no occasion to reach the issue of damages, petitioner seeks damages that are not recoverable in contract; his injuries were not proximate and natural consequences of his assignment. See *Shelton* v. *United States*, Ct. Cl., No. 486-76, decided September 30, 1977; *Northern Helex Co.* v. *United States*, 524 F. 2d 707, 720 (Ct. Cl.); ALI, *Restatement, Contracts*, §330 (1932); Williston on *Contracts*, §1344 (3d ed. 1968).

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